THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.930 of 2004

21.12.2005

Between:

Devarasetti Tirumala Rao and others

... Petitioners

AND

The Superintendent of Police, Srikakulam

And others.

...Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.930 of 2004

ORDER:

The writ petition is filed seeking a writ of Mandamus declaring the action of the respondents in commencing the rowdy sheet proceeding against the petitioners in Hiramandalam Police Station, Srimamulam District as illegal and void.

The petitioners are residents of Peddakota Panchayat in Srikakulam District. They were implicated in Crime No.62 of 2003 of Hiramandalam P.S. by the third respondent at the instance of a 'C' category rowdy sheeter due to political reasons. It is alleged that while granting bail to the second petitioner learned I Additional Sessions Judge, Srikakulam observed that the allegations does not attract the ingredients of the offence alleged against the accused for the offences under Sections 307 and 120-B of Indian Penal Code, 1860 (IPC). Except this false case, there is no case pending against him. It is their case that the respondent police are opened rowdy sheet against the second petitioner and also taking steps to open

rowdy sheets against the other petitioners without any valid reason and contrary to Order 742 of A.P. Police Standing Orders.

The Sub Inspector of Police, P.S. Sarubujjili, Srikakulam District filed counter affidavit denying the allegations made in the writ petition. It is stated that the second petitioner was frequently involved in criminal activities causing breach of peace and public tranquility and therefore, a rowdy sheet was opened against him in accordance with the provisions of Standing Orders. It is also stated that in view of the fact that the second petitioner is continuously indulging in criminal activities, the rowdy sheet cannot be closed. With regard to other petitioner, it is stated that no rowdy sheets are opened against them nor any proposals are pending.

The questions raised in this writ petition are squarely covered by the judgment of this Court in **S. Satyanarayana v. State of A.P.**. Therefore, the writ petition is disposed of directing the first respondent to consider the request of the petitioners for closing rowdy sheet following the principles laid down in **Satyanarayana**'s case (supra), which are as under.

i. A mere conviction or convictions cannot be thumb rule for opening history sheet or rowdy sheet though history sheet can be opened even without conviction for the limited purpose of watching a person discreetly.

ii. At the time of opening a history sheet or rowdy sheet a competent officer has to apply mind taking into consideration the social background the proceedings in the criminal trial if a person is convicted and all other relevant material before passing orders for opening history sheet or rowdy sheet.

iii. A history sheet/rowdy sheet is retained for the period of two years only unless it is ordered to be closed by the Superintendent of Police earlier than two years. During the initial period of two years, the history sheeter or rowdy sheeter is entitled to request the concerned police officer to close the history sheet or rowdy sheet which has to be considered by the police officer in an objective manner.

iv. While passing orders for retention of history sheet for another year more, the competent Sub-Divisional Police Officer has to take into consideration the various factors, to wit, surveillance reports, the crime history with reference to the breach of peace of society during the preceding year, the social and political background of the person etc. If there is a preponderance of opinion among the surveillance officers that the person did not come up for any adverse notice and leading a blemishless family life it is a strong circumstance to order for closure of the history sheet or rowdy sheet.

v. When an order is passed by the competent police officer for retention of the history sheet by simply endorsing on the report/letter of the S.H.O. a single line order, that by itself cannot be a ground to continue the rowdy sheet.

vi. Any order passed by the Sub-Divisional Police Officer shall have to be supported by reasons. The reasons need not be communicated but to be recorded.

vii. The orders for opening or retention of history sheet/rowdy sheet are passed under the administrative instructions/guidelines. If such an order is challenged, the competent authority has to place the reasons before the Court which justify retention of history sheet/rowdy sheet. Further, it is always better for the Police Officer to record his own reasons for retention/opening of the history sheet/rowdy sheet.

viii. In the event as mentioned in conclusion 4.7 it is always open to the Court of

judicial review to direct the Sub-Divisional Police Officer to reconsider his decision and pass appropriate orders. But whatever be the events in the guise of opening/retention of history sheet a person's liberty, right to privacy and other freedoms under Article 19 of the Constitution of India cannot be infringed under any circumstances.

ix. It is to be remembered that any order of the competent police officer which is not supported by reasons is itself unreasonable and arbitrary and can be termed as mala fide in the sense that it is contrary to the purpose for which the Police Officer is authorised under relevant Police Standing Orders. Hence, if the Court comes to the conclusion that the order of the Sub-Divisional Police Officer is contrary to the purpose for which surveillance is authorised, the action shall be set at naught forthwith on the principle that what is unreasonable and unfair is arbitrary and such arbitrary exercise of power amounts to exercising, the power mala fide.

Since there are no proposals, as admitted in the counter affidavit, are pending to commence proceedings to register rowdy sheet against the petitioner Nos.1, 3 and 4, they cannot have any grievance. With regard to second petitioner, he is at liberty to approach the first respondent by filing appropriate representation for closing rowdy sheet, if the same is still continued.

The writ petition is, accordingly, disposed of. No costs

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(V.V.S.RAO, J)

December 21, 2005.

Note:

Dispatch copy of the order by 22.12.2005.

(B/o)

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